

that it does in fact receive substantial support from contributions from a representative number of persons; that pursuant to its organizational structure and method of operation it makes bona fide solicitations for broad based public support, or, in the case of a newly created organization, that its organizational structure and method of operation are such as to require bona fide solicitations for broad based public support; that it receives substantial support from a community chest or similar public federated fund raising organization, such as a United Fund or United Appeal; or that it has a substantial number of members (in relation to the community it serves, the nature of its activities, and its total support) who pay annual membership dues.

(4) Although primary consideration will be given to the source of an organization's support, other relevant factors may be taken into account in determining whether or not the organization is of a public nature, such as:

(i) Whether the organization has a governing body (whether designated in the organization's bylaws, certificate of incorporation, deed of trust, etc., as a Board of Directors, Board of Trustees, etc.) which is comprised of public officials, of individuals chosen by public officials acting in their capacity as such, or of citizens broadly representative of the interests and views of the public. This characteristic does not exist if the membership of an organization's governing body is such as to indicate that it represents the personal or private interests of a limited number of donors to the organization (or persons standing in a relationship to such donors which is described in section 267(b) and the regulations thereunder), rather than the interests of the community or the general public.

(ii) Whether the organization annually or more frequently makes available to the public financial reports or, in the case of a newly created organization, is constituted so as to require such reporting. For this purpose an information or other return made pursuant to a requirement of a governmental unit shall not be considered a financial report. An organization shall be considered as making financial reports of its operations available to the public if it

publishes a financial report in a newspaper which is widely circulated in the community in which the organization operates or if it makes a bona fide dissemination of a brochure containing a financial report.

(iii) If the organization is of a type which generally holds open to the public its buildings (as in the case of a museum) or performances conducted by it (as in the case of a symphonic orchestra), whether the organization actually follows such practice, or, in the case of a newly created organization, is so organized as to require that its facilities be open to the public.

(5) The application of this subdivision (c) may be illustrated by the following examples:

Example 1. M, a community trust, is an organization referred to in section 170(c)(2). In 1950, M was organized in the X Community by several leading trusts and financial institutions with the purpose of serving permanently the educational and charitable needs of the X Community by providing a means by which the public may establish funds or make gifts of various amounts to established funds which are administered as an aggregate fund with provision for distribution of income and, in certain cases, principal for educational or charitable purposes by a single impartial committee. The M Organization, by distribution of pamphlets to the public through participating trustee banks, actively solicits members of the X Community and other concerned parties to establish funds within the trust or to contribute to established funds within the trust. Under the declaration of trust, a contributor to a fund may suggest or request (but not require) that his contribution be used in respect of his preferred charitable, educational, or other benevolent purpose, and distributions of the income from the fund, and in certain cases the principal, will be made by the Distribution Committee with regard to such request unless changing conditions make such purpose unnecessary, undesirable, impractical, or impossible in which case income and (where the contributor has so specified) principal will be distributed by the Distribution Committee in order to promote the public welfare more effectively. Where a contributor has not expressed a desire as to a charitable, educational, or other benevolent purpose, the Distribution Committee will distribute the entire annual income from the fund to such a purpose agreed upon by such committee. The Distribution Committee is composed of representatives of the community chosen one each by the X Bar Association, the X Medical Society, the mayor of X Community, the judge of the highest X

Court, and the president of the X College, and two representatives chosen by the participating trustee banks. There are a number of separate funds within the trust administered by several participating banks. M has consistently distributed or used its entire annual income for projects with purposes described in section 170(c)(2)(B) from which members of the public may benefit or to other organizations described in section 170(b)(1)(A) which so distribute or use such income. Through its participating trustee banks, M annually makes available to the public a brochure containing a financial statement of its operations including a list of all receipts and disbursements. Under the facts and circumstances, M is a "publicly supported" organization.

Example 2. Assume the same facts as in *Example (1)* except that M has been in existence for only one year and only two contributors have established funds within the trust. The Distribution Committee has been chosen and is required by the governing declaration of trust to make annual distribution of the entire income of the trust to projects with purposes described in section 170(c)(2)(B) from which members of the public may benefit or to other organizations described in section 170(b)(1)(A) which so distribute or use such income. The declaration of trust and other governing instruments require (1) that the M Community Trust actively solicit contributions from members of the X Community through dissemination of literature and other public appeals, and (2) that it make available to the members of the X Community, annual financial reports of its operations. Under the facts and circumstances, M is a "publicly supported" organization.

Example 3. N, an art museum, is an organization referred to in section 170(c)(2). In 1930, N was founded in Y City by the members of a single family to collect, preserve, interpret, and display to the public important works of art. N is governed by a self-perpetuating Board of Trustees limited by the governing instruments to a maximum membership of 20 individuals. The original board consisted almost entirely of members of the founding family. Since 1945, members of the founding family or persons standing in a relationship to the members of such family described in section 267(b) have annually constituted less than one-fifth of the Board of Trustees. The remaining board members are citizens of Y City from a variety of professions and occupations who represent the interests and views of the people of Y City in the activities carried on by the organization rather than the personal or private interests of the founding family. N solicits contributions from the general public and for each of its four most recent taxable years has received total contributions in small sums (less than \$100) in excess of \$10,000. For N's four most recent taxable years, investment

income from several large endowment funds has constituted 75 percent of its total support. N normally expends a substantial part of its annual income for purposes described in section 170(c)(2)(B). N has, for the entire period of its existence, been open to the public and more than 300,000 people (from the Y City and elsewhere) have visited the museum in each of its four most recent taxable years. N annually publishes a financial report of its operation in the Y City newspaper. Under the facts and circumstances, N museum is a "publicly supported" organization.

Example 4. In 1960, the O Philharmonic Orchestra was organized in Z City through the combined efforts of a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. O is an organization referred to in section 170(c)(2). The orchestra is composed of professional musicians who are paid by the association. Twelve performances, open to the public, are scheduled each year. The admission charge for each of these performances is \$3. In addition, several performances are staged annually without charge. In each of its four most recent taxable years, O has received separate contributions of \$10,000 from A, B, C, and D (not members of a single family) and support of \$5,000 from the Z Community Chest, a public federated fund raising organization operating in Z City. O is governed by a Board of Directors comprised of five individuals. A faculty member of a local college, the president of a local music society, the head of a local banking institution, a prominent doctor, and a member of the governing body of the local Chamber of Commerce currently serve on the Board and represent the interests and views of the community in the activities carried on by O. O annually files a financial report with Z City which makes such report available for public inspection. Under the facts and circumstances, O is a "publicly supported" organization.

Example 5. P is a newly created organization of a type referred to in section 170(c)(2). P's charter requires that its governing body be selected by public officials and by public organizations representing the community in which it operates. Pursuant to P's charter, a continuing fund raising campaign which will encompass the entire community has been planned. P's charter requires that its entire annual income be distributed to or used for projects with purposes described in section 170(c)(2)(B) and that it make available to the public annual financial reports of its operations. By reason of the express provisions of P's charter relating to its organizational structure and prescribed methods of operation, P is a "publicly supported" organization.